

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DOROTHY CHANDLER, FORMERLY }
DOROTHY BALLARD)

Appearances:

For Appellant: Dorothy Chandler, ~~in~~ pro. per.
For Respondent: Brian Toman
 Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dorothy Chandler, formerly Dorothy Ballard, against a proposed assessment of additional personal income tax and penalty in the total amount of \$5,643.75 for the year 1972.

Appeal of Dorothy Chandler

The issues to be decided are: (1) whether respondent properly determined appellant's state income tax liability utilizing appellant's federal return where no state return was filed and (2) whether respondent properly imposed a penalty for failure to file a timely return.

After a thorough search of its files, respondent determined that appellant had not filed a personal income tax return for 1972. Respondent requested that appellant either file a return or submit proof that one had been filed. Appellant responded that she had filed a 1972 return but had lost or misplaced all records relating to that year as a result of her home being ransacked. However, pursuant to respondent's request, appellant did provide a copy of her 1972 federal return, which respondent used to determine appellant's state tax liability, pursuant to Revenue and Taxation Code section 18648. Respondent also assessed a penalty for appellant's failure to file a timely return. (Rev. & Tax. Code, § 18681.) Appellant protested the proposed assessment, which was affirmed by respondent on March 28, 1975. This timely appeal followed.

In the course of this appeal, respondent received permission from appellant to solicit information from an accountant who had knowledge of certain income items reported on the federal return which required clarification. On the basis of the accountant's reply, respondent adjusted appellant's state tax liability and attempted to conclude the appeal. However, appellant did not agree with respondent's calculations, and the appeal proceeded to an oral hearing.

At that hearing, the appellant was unable to provide evidence that she filed a 1972 return, although she believes she sent a check to respondent in payment of her 1972 tax liability. Respondent has no record of having received such a payment however, and appellant has been unable to produce any proof that the payment was made. At the oral hearing, appellant authorized a search of her bank records, but this effort did not produce any new evidence. Accordingly, we must conclude that appellant's 1972 tax liability has not been paid. There being no contrary evidence, the calculation of tax due made by respondent must be upheld as correct. (See Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977.)

'The penalty imposed by respondent for appellant's failure to file may be excused if the failure to file was due to reasonable cause and not willful neglect. (Rev. & Tax. Code, § 18681.) The burden of proof is on the taxpayer. (Appeal of Sarkis N. Shmavonian, supra.) In this regard, we were impressed

Appeal of Dorothy Chandler

at the oral hearing with appellant's firm conviction that she paid her 1972 tax liability. While we recognize that the record herein does not support that belief, appellant's account of her circumstances combined with other factors made apparent at the hearing, has convinced us that the failure to file was due to reasonable cause and not willful neglect. Therefore, we conclude that the penalty imposed herein should be cancelled.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Dorothy Chandler, formerly Dorothy Ballard, against a proposed assessment of additional personal income tax and penalty in the total amount of \$5,643.75 for the year 1972, be and the same is hereby modified to reflect the cancellation of the penalty in the amount of \$1,128.75 for the year 1972. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 9th day of
May, 1979, by the State Board of Equalization.

Shelley B. Barnes, Chairman
Michael C. [unclear], Member
Robert [unclear], Member
_____, Member
_____, Member